

avoid the transactions costs associated with filing/responding to dispositive motions.

On July 8, 2010, the Court granted in part and denied in part the parties' request to extend the deadline to file pretrial submissions, noting that the requested deadline was after the date for pretrial conference.

Now, on the date that dispositive motions are due, Plaintiffs' counsel has filed an advisory with the Court claiming to have a pre-paid vacation on the date that the trial is scheduled. Counsel's advisory acknowledges that trial is scheduled for August 2, 2010, but in spite of knowing this, he claims that if the case goes to trial on its scheduled trial date, it "would significantly impair Plaintiffs' ability to prepare for and attend trial."

The parties have also moved for a continuance of 45 to 60 days so that they may file dispositive motions, pretrial submissions, and prepare for trial. In spite of their claims that they are actively engaged in settlement negotiations and seek to avoid the expenses of filing and responding to dispositive motions, they state that "the Court may be able to resolve some of the legal issues by way of dispositive motions."

"When the question for the trial court is a scheduling decision, such as whether a continuance should be granted, the judgment range is exceedingly wide, for, in handling its calendar and determining when matters should be considered, the district court must consider not only the facts of the particular case but also all of the demands on counsel's time and the court's." *Fontenot v. Upjohn Co.*, 780 F.2d 1190, 1193 (5th Cir. 1986). Plaintiffs' counsel has been aware since October 21, 2009, that trial was scheduled for August 2, 2010. Any prejudice to the Plaintiffs would be the result of counsel's failure to abide by the Court's scheduling order. The parties have repeatedly sought extensions to the deadlines claiming to be actively engaged in settlement negotiations. When

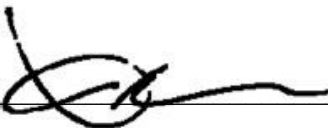
those deadlines threatened to interfere with the Court's ability to fully consider dispositive motions and the trial date, the parties were warned but continued to seek the extensions anyway. None of the parties' pleadings have taken the Court's schedule, docket, or need to balance its multiple criminal and civil caseloads when establishing a scheduling order into consideration.

In granting the parties' initial request for an extension of the deadline, the Court was mindful of counsels' time in light of the date that it granted the motion for conditional class certification. In setting its deadlines, the Court must also consider its own time.

Because the motion is filed at the request of Plaintiffs and Defendants, the Court will GRANT the continuance. A scheduling order setting a deadline for dispositive motions, the date for pretrial submissions, a date for pretrial conference, and a date for jury selection/trial will be forthcoming. Having considered the caseload and schedule of the United States District Court for the Western District of Texas when the amended scheduling order is issued, no further extensions of time or modifications to that scheduling order will be granted.

It is so ORDERED.

SIGNED this 14th day of July, 2010.



XAVIER RODRIGUEZ
UNITED STATES DISTRICT JUDGE